Northern Ireland Audit Office

Transfer of Surplus Land in the PFI Education Pathfinder Projects

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

NIA 21 07/08, 11 SEPTEMBER 2007

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Northern Ireland Audit Office

Report by the Comptroller and Auditor General for Northern Ireland

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This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 for presentation to the Northern Ireland Assembly in accordance with Article 11 of that Order.

J M Dowdall CB Northern Ireland Audit Office

Comptroller and Auditor General 11 September 2007

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office employing some 145 staff. He, and the Northern Ireland Audit Office are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to NI Assembly on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

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Abbreviations

DE	Department of Education
DEL	Department for Employment and Learning
DFP	Department of Finance and Personnel
DRD	Department for Rural Development
MoD	Minister of Defence
NIAO	Northern Ireland Audit Office
PAC	Public Accounts Committee
PFI	Public Finance Initiative
PPP	Public Private Partnership
RPI	Retail Price Index
SIB	Strategic Investment Board
VFM	Value for Money
VLA	Valuation and Lands Agency

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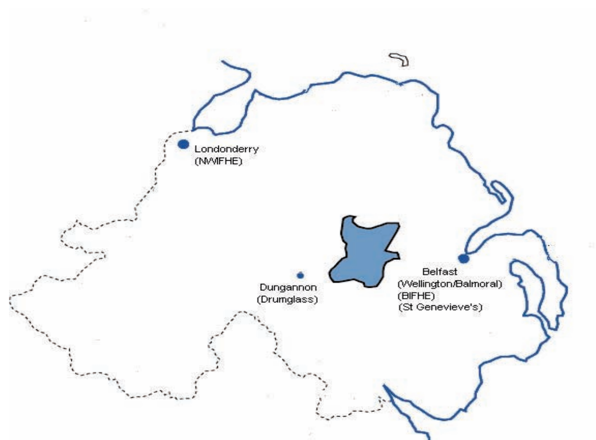
Executive Summary

1. In 1996, the Department of Education (DE)[1] was faced with a substantial capital and maintenance backlog and limited budgets for its schools. It decided to explore the extent to which the Private Finance Initiative (PFI)[2] could be used to complement conventional procurement in improving the estate. Four secondary schools and two further and higher education colleges, which were geographically dispersed throughout Northern Ireland, were selected to be Pathfinder PFI projects. These were Balmoral High, Drumglass High, Saint Genevieve's High, Wellington College, Belfast Institute of Further and Higher Education (the Belfast Institute) and the North West Institute of Further and Higher Education (the North West Institute), all of which were high priorities in DE's planned capital programme (See Figure 1).

Figure 1 - Five PFI contracts were let for Six Education Projects



2. Five PFI contracts were subsequently let for the six projects, Balmoral High School and Wellington College being covered by a single contract. Deals were finalised between June 1999 (Drumglass) and October 2000 (Balmoral/Wellington).

3. Our Report "*Building for the Future*", published in October 2004[3], reported the findings from our examination of each of the PFI Education Pathfinder projects, which addressed the following issues:

- was the design, build and operation of PFI schools/colleges comparable or better than conventionally procured projects?
- had the delivery of the Pathfinder schools/colleges been equal to, or better than, conventionally procured projects? and
- had lessons been learned from the Pathfinder projects?

4. During that examination, we found that four of the five contracts contained clauses which resulted in the transfer of "surplus land" from the public sector to the successful operator. The total transfer value of these sites, at contract signature, was over £23 million. These transfers were key to the projects' affordability as income generated through the surplus land transfers was used as upfront capital funding to reduce unitary payments.

5. Given the value of the surplus land transactions and the novel nature of their transfer, we decided to carry out a separate examination with a view to highlighting and promoting best practice and lessons learned from the experience.

Scope and Methodology

6. Our examination involved a review of each land deal to ensure that: the sale of each surplus asset was appropriate; maximum value was obtained; and there were controls in place to protect the departments' future interests in each site.

7. We did this through checking whether the key principles of land disposal were applied in both the production and implementation of the surplus land agreements. We also sought evidence that consideration had been given to the suitability of the land deals in each contract. These were reviewed to ensure that the

1. The Department of Education (DE) is responsible for the central administration of primary and post-primary education. Prior to the reorganisation of Northern Ireland Departments in 1999, DE was also responsible for Further and Higher Education. Responsibility for this sector now rests with the Department for Employment and Learning (DEL).

2. PFI is an arrangement whereby a consortium of private sector partners come together to provide an asset-based public service under contract to a public body.

3. "*Building for the Future: A review of PFI Education Pathfinder Projects*" (NIA 113/03) 14th October 2004.

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public sector shared, through clawback[4] arrangements, in any benefits derived from site development or sell-on. Department of Health (GB) guidance[5] (see paragraph 1.6), although not available when these projects were developed, was used as a benchmark throughout our fieldwork. Whilst the guidance was issued for use by GB National Health Service Trusts and post-dates the letting of the Northern Ireland PFI Education Pathfinder agreements, the key principles are equally relevant and applicable to PFI surplus land transactions in Northern Ireland.

8. Information was obtained through meetings with key staff in the Department of Education (DE); Department for Employment and Learning (DEL); the Education and Library Boards; and the Strategic Investment Board[6] and our review of relevant papers, written correspondence, legislation and departmental policy and guidance.

Main Findings and Recommendations

9. The use of receipts from surplus lands and properties to support PFI projects was seen as a solution to funding the initial capital investment to construct major assets and for reducing the level of unitary payments over the life of the project. However, there are real risks to value for money e.g. due to the volatile nature of land values. These can be mitigated through negotiating and including in contracts clawback clauses which protect the public sector's interests, both in the short and longer term. The Department told us that the Surplus Land Agreement between the Belfast board and the operator for the Wellington/Balmoral project set out the arrangements governing the use of surplus land, and included clawback provision. They explained that, although linked to gross outturn development value, these provisions were actually designed to index up the guaranteed minimum site purchase price, not to capture a portion of the operational development profits. However, in our view, this does not align with statements made by the Department or the Belfast Board (paragraph 3.5). We also note the view expressed by the Public Accounts Committee at Westminster who recommended that "*clawback arrangements should be capable of ensuring a fair return to the taxpayer if profits are greater than expected*"[7].

10. The Wellington/Balmoral Project was unusual. Due to the high value of surplus lands transferred to the operator by the Board, the construction works were effectively paid for on completion of the facilities. The operating consortium had a commercial interest in developing the surplus land and, together with its bankers, had a strong interest in the early completion of the new facilities.

11. It is clear that there was a complex negotiation at the time over the inclusion of the surplus land in the project. This involved the consideration of options for the replacement schools, the options available to the operator on the use of the lands, and the potential implications for clawback, income-sharing and the level of unitary charges which would be set. It indicates a need to consider the elements together as part of an overall deal.

12. We recognise that the five PFI education projects awarded between 1999 and 2000 were pathfinder projects and the inclusion of receipts from the transfer of surplus land on the sites was a novel approach. The Department considers that including receipts from sale of surplus land can complicate a proposed scheme and there is now a general presumption that it would not be part of a scheme unless there were clear merits in doing so.

13. When public bodies enter into such complex agreements, they must ensure that effective controls are in place to protect the public interest in the resources invested. The public sector partners in the

4. Clawback is a term to describe a sum of money in addition to the original sale price which a seller of land may be entitled to receive following completion, if and when the buyer complies with agreed conditions.

5. *Land and Buildings in PFI Schemes* (Version 2); January 2003.

6. Established by the Strategic Investment and Regeneration of Sites (NI) Order 2003, the Strategic Investment Board Limited (SIB) is a limited company wholly owned by the Office of the First Minister and Deputy First Minister (OFMDFM). Its role is to help departments deliver capital projects/programmes, to foster reform and to build a long-term investment strategy for Northern Ireland. SIB also works in partnership with bodies carrying out major investment projects.

7. Twenty Seventh Report of the Public Accounts Committee, Castlecourt Shopping Centre (Belfast), *Arrangements for Clawback of Urban Development Grant* (HC 268, 1995-96).

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Education Pathfinder Projects did put in place control measures including clawback arrangements, restrictions on the nature of development and through making use of expert legal, valuation and financial advice.

14. Despite these measures, in our opinion, the Departments and Boards could have done more to secure value for money from the transfer of land in these projects.

Market Value may not have been obtained for surplus lands

15. Public bodies must ensure that they receive market value on sale or transfer of land and property. While it may be pragmatic to agree a value during negotiations that appears to make a project more affordable, future land values can be difficult to predict. Market value should be established at the outset for all proposed disposals. As a first step for all major schemes we recommend that at least two valuations are obtained, including one from the Land and Property Services (LPS).[8] Consideration should also be given to how surplus land can be marketed to maximise its disposal value.

16. In the four contracts examined, surplus land may have been transferred at less than market value. We estimate the shortfall in the transfer value for these projects to be in the region of £4.2 million at contract signature. A contributory factor was the absence of up to date land valuations prior to contract signature. Land and Property Services told us that using the earlier valuations avoided a continuous renegotiation of the land values and delaying the agreement. In its response, the Department told us that had the Belfast Board pressed for higher valuation of the land just before sale, or for a different clawback arrangement in the negotiation, the contractor could have demanded a higher unitary payment. However, it is not clear from the papers made available to us that this view was tested at the time of negotiations. In our view, maximising the value of the land in advance of negotiations through, for example, obtaining enhanced planning permission, may have strengthened the Departments' and Boards' negotiating position in these deals.

17. The Wellington/Balmoral agreement provided for the transfer of land to the operator with surplus proceeds totalling £860,000 being retained in a deposit account and offset against unitary payments over the period of the agreement. Responsibility for the management of the surplus proceeds rests with the Operator who, under the terms of the Agreement, also received the interest earned on these funds even though they are public funds. We consider that where public sector monies are held on deposit, interest earned should be payable to the public sector. Furthermore, in our opinion, the Belfast Board has not exercised the necessary stewardship over these funds. It is vital that public bodies ensure that the necessary governance arrangements are put in place and implemented to protect, monitor and manage public sector funds.

18. Disposal of surplus assets through public auction might have provided a better measure of the market value of the lands. The ability to retain receipts may also incentivise public bodies to maximise income and make measured judgements on including surplus land in PFI schemes.

Clawback arrangements were in place, but they were not fully effective

19. It is important when public bodies enter into complex agreements, such as PFI contracts, that controls are in place to protect their future interests. In the PFI Pathfinder Projects, provisions were included in the surplus land agreement protecting the Belfast Board from: sale of surplus land by the PFI Operator with an element of "clawback" for the Belfast Board; or the development of the site by the PFI Operator and an effective share of the income with the Belfast Board. In each of the transactions a "Contractor Monetary Threshold" was set beyond which income would be shared. However Wellington/Balmoral is

8. LPS incorporated the former Valuation and Lands Agency (VLA) on 1 April 2007. The Agency has been established initially from the merger of the former Rate Collection Agency and the Valuation and Lands Agency. This will be followed by the addition of Land Registers of Northern Ireland and Ordnance Survey of Northern Ireland from 1 April 2008.

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the only contract where clawback has been secured to date; this totalled £3.8 million. There was also a wide variation on how this threshold was set in each project. For example, in the North West Institute Project, the surplus asset was sold on for an additional £175,000, four months after its transfer. No clawback was recovered as the agreed threshold had not been breached.

20. In the Balmoral Project, the Operator informed the Belfast Board that it was selling the undeveloped site for £3.8 million to a wholly-owned subsidiary and considered that the Belfast Board's clawback was limited to £13,000. Following intensive negotiations, the Belfast Board secured clawback of £793,000.

21. On the Wellington site, the operator proposed to transfer the balance of the partial and undeveloped surplus lands to a connected party. This again led to intensive negotiations. In this case, a settlement was reached, which resulted in the Belfast Board receiving £3 million for the entire site, which was a combination of both clawback and a share of income. We estimate that, through this settlement, the Belfast Board has recovered £400,000 in excess of the value originally placed on the surplus land at contract signature. However, on the basis of estimates at the time of the agreement in 2000, greater benefits from clawback could potentially have been realised.

22. In negotiating clawback, public bodies must ensure that the interests of the taxpayer are safeguarded. This requires up-to-date valuations, taking account of approved planning permissions, market trends to date and future projections. On completion of negotiations, public sector bodies should be in a position to demonstrate that they have secured the best deal available and obtained value for money in the process.

An estates strategy is required for Northern Ireland

23. A key output from the Reinvestment and Reform Initiative is the Investment Strategy for Northern Ireland, published in 2006. This sets out an ambitious programme of public sector infrastructure investment. The delivery of this programme will require an independent, strategic examination of the delivery of key programmes and projects and close co-operation between public sector entities and the business community. The Reinvestment and Reform Initiative also saw the transfer, free of charge, to the NI Executive from the Ministry of Defence and the Northern Ireland Office, of a number of military bases and security sites for the economic and social regeneration of local areas. Further sites are also being made available.

24. In addition to these sites, the NI Executive and wider public sector also hold significant assets. In our view, considering the best long-term use of these valuable assets must take into account local and strategic priorities. For example, the recent "*Review into Affordable Housing Report*" published in Spring 2007, highlighted the importance of this in the context of the provision of land for housing. Indeed that report also emphasised the need for an over-arching strategic framework for regeneration activities in Northern Ireland which will allow key public sector organisations to ensure their corporate policies take account of the wider regeneration agenda. In our opinion, the development and implementation of an effective estates strategy for Northern Ireland is crucial to maximising the benefits to be derived from the public sector estate. We believe that this can be best achieved if its development and implementation are linked with the future development and rolling forward of the Investment Strategy.

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Key Lessons from this Examination

1. Permitting public bodies to retain receipts from the sale of surplus land incentivises those authorities to maximise income generation and this approach is worth pursuing if increased value for money can be demonstrated.

2. Before including surplus assets in any deal, public sector bodies should assess the relative returns and priority between inclusion and conventional disposal, and properly assess the contribution these assets may make to the achievement of other strategic priorities and objectives.

3. Where land or buildings become surplus to requirements as a consequence of any proposed development, two tests for value for money are appropriate; the economic assessment of (i) the overall scheme and (ii) of the land disposal. Where disposal is confirmed, it should be for at least market value.

4. Identifying the potential for alternative uses, zoning within area plans and obtaining outline or enhanced planning permission (when considered beneficial) for surplus assets, prior to disposal, places public sector bodies in a much stronger negotiating position. Consideration should be given to how surplus assets are marketed to maximise income.

5. Updated valuations should be obtained in advance of contract signature and at other key stages of the negotiation process.

6. Public bodies should ensure that arrangements are put in place and implemented to protect, monitor and manage public sector funds. For example, where public sector monies are held by private sector bodies, any interest earned should be payable to the public sector.

7. There is a need for sound drafting and legal advice on the contract terms relating to the disposal of land and securing a share in market increases or development value of surplus land.

8. It is important that receipts from the sale of land are maximised, particularly where plots of land merit ‘key land’ status.

9. To avoid potential disputes arising, definitions in contracts must be comprehensive, coherent and transparent and understood by all parties to the agreement.

10. When agreeing land and property contracts, authorities should consider including ‘clawback on assignment’ protection. This ensures that a share of market increases or development value of surplus land is recoverable by the authority should the purchaser’s interest in a development be subsequently sold or transferred.

11. In negotiating the settlement of clawback clauses, public bodies must ensure that the interests of the taxpayer are best served. This requires up-to-date valuations, taking account of approved planning permissions, market trends to date and future projections.

12. Often to avoid potential conflicts of interest, financial institutions will put in place “ethical walls” (not physical) as a safeguard in dealing with potential conflicts of interest. These are not, of themselves, acceptable to mitigate conflicts. It is also important that, in evaluating the likely consequences of such situations and relationships, public bodies consider whether it is probable that it could be concluded that objectivity is impaired or likely to be impaired.

13. The development and implementation of an effective estates strategy for Northern Ireland is crucial to maximising the benefits to be derived from the public sector estate. This can be best achieved if its development and implementation are linked with the future development and rolling forward of the Investment Strategy.

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Part One

The best use of surplus land should be fully explored and receipts from sale or transfer should be maximised

The sale of surplus land must not prejudice the public authority's position in the event of early termination of a contract

1.1 Between June 1999 and October 2000 five contracts were let for six Education PFI Pathfinder projects. Four of the five contracts contained clauses dealing with the transfer of surplus lands from the public sector to the PFI operator. Figure 2 provides an analysis of the land transfers included in the four contracts. The transfer value of those lands was significant; over £23 million in contracts with a total capital value of almost £55 million.

1.2 The standardized framework of PFI contracts recognises the need to ensure that the surplus land transaction does not prejudice the public authority's position should an event such as early termination arise. This is of particular significance where surplus land contributes a high proportion of the capital cost of a project, for example the Wellington/Balmoral project. This project was unusual, even for a PFI agreement, given that:

- the value of the surplus land transferred to the operator was high compared with the total project costs. Therefore, construction works were effectively paid for on completion of the facilities;
- the surplus lands were fundamental to the financing of the construction works as they represented the bank's only security for its lending during the construction period; and
- the operating consortium had a commercial interest in the surplus land. Therefore both the Operator and the lender had a strong interest in the early completion of the new facilities.

Figure 2: Education PFI Pathfinder Land Transfer Values Exceeded £23 million

School/ Institute	Capital Value of Contract £m	Transfer Value of Surplus Land at contract Signature £m	
Drumglass	5.9	-	0.41
Wellington and Balmoral	18.9	Rosetta Site	0.99[a]
		Balmoral High School	3.28[b]
		Wellington College	15.50
			19.77
Belfast Institute	20.0	Ormeau Site	2.35
		Templemore Site	0.03
		Willowfield Site	0.15
			2.53
North West Institute	9.8	Tillie & Henderson Building[c]	0.75
Total	**54.6m**		**23.46m**

Source: NIAO

a) In return for the Rosetta Site, the contract also provided for the provision of one all-weather pitch (in place of two conventional pitches) and an enlarged sports hall for Wellington College, which the Board estimated had a value of £1.4 million and exceeded minimum requirements defined in the Schools Building Handbook at that time.
b) Valued on the basis of residential development since it was determined that commercial planning permission would be difficult to secure and could also further protract the duration of the procurement.
c) A listed building.

1.3 In such circumstances, the authority may be left in a weakened position, since the front-loading of the capital payment, effected by the surplus land transfer, does not provide the same scope as a conventional PFI project to withhold payment for contract default. It is therefore essential in drafting termination clauses, particularly where capital contributions have been made in advance, that the public authority does not leave itself in the exposed position where it may be more financially beneficial for the service provider to terminate, rather than continue with, the contract as originally agreed.

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1.4 The front-loading of capital funding through surplus land transfer also impacts on the authority's ability to bring pressure to bear on the service provider for poor performance. In such circumstances, the abatement of unitary payments is less punitive where capital contributions have been made in advance of the commencement of service provision. Therefore, it is essential that the authority ensures during negotiations that performance clauses are included which proportionally reflect the seriousness of any shortfall in service delivery.

Comprehensive guidance has been produced for the National Health Service Trusts in Great Britain

1.5 Generic guidance dealing with surplus assets is contained in the Treasury Green Book[9] and Government Accounting (NI). The Department of Finance and Personnel (DFP) has also issued guidance, prepared by the Valuation and Lands Agency (VLA), for the management and disposal of property.[10]

1.6 In Great Britain, the Private Finance Unit of the Department of Health (GB) has produced comprehensive guidance for its National Health Service Trusts on the inclusion of land and buildings in PFI Schemes.[11] Forming the basis of this guidance is a fundamental presumption that, unless there is a strong commercial reason, surplus land not integral to the development of the project should be excluded from PFI deals. It also sets out a number of key principles for determining when and how land should be disposed of in PFI deals. These are set out in Appendix 1. Whilst the guidance was issued for use by GB National Health Service Trusts and post-dates the letting of the Northern Ireland PFI Education Pathfinder agreements, the key principles are equally relevant and applicable to PFI surplus land transactions in Northern Ireland.

Details of the surplus lands should be circulated to other Government Departments

1.7 There is a requirement on all Northern Ireland departments to notify VLA of surplus property/land to enable it to circulate the details to all public bodies. This avoids the public sector having to compete to purchase land already in public ownership.

1.8 In the Education Pathfinder Projects no details were forwarded to VLA. The Department told us that, while it did not pass details of the surplus land on to VLA, it did consult with other public sector agencies, such as the Housing Executive, on the Wellington site. In its approach to the land deals, the Department told us that it considered at the time of the transactions that:

- the PFI context of disposal took it outside normal disposal;
- projects with land deals would attract better quality bidders;
- it could extract better added value in the overall quality of the product; and
- sale on the open market could be adversely impacted on by school construction.

1.9 The benefits of liaising with other public bodies are demonstrated in the Downshire Campus in Downpatrick, currently being developed by the South Eastern Health and Social Care Trust (formerly the Down Lisburn Trust) in conjunction with the Strategic Investment Board - see Case Study 1.

9. DAO (DFP) 08/03.
10. *Disposal of Surplus Public Sector Property in Northern Ireland* (issued by DFP in 1999 and updated in 2005).
11. See footnote 5.

Case Study 1 - Redevelopment of the Downshire & Downe Hospital Sites

The Downshire Hospital, which is part of the South Eastern Health and Social Care Trust (formerly the Down Lisburn Trust) estate, is situated on the edge of Downpatrick, Co. Down. Part of the hospital is currently unoccupied; it also has a considerable estate attached to the site. Also located in Downpatrick town centre is Downe Hospital and some smaller Trust owned buildings. In conjunction with the Strategic Investment Board (SIB), the Trust is rationalising these sites. It has developed a site regeneration Master Plan for the Downshire site which will see the redevelopment of healthcare services and facilities in Downpatrick. SIB told us that the solutions are consistent with health care needs of the area and represent value for money for the taxpayer.

Included in this strategy are plans for the Trust to re-locate the Downe Hospital and its various town centre offices onto the surplus land on the Downshire site. To facilitate other local/national priorities, the Trust has contacted both local and central government bodies with a view to developing a public sector campus on this site which will meet the needs of the local community. Future proposals for the site include:

- mental health facilities;
- Community Care Centre;
- a children's home;
- the establishment of a new district Police Station;
- the re-location of district council offices;
- location of other public sector bodies, e.g Ambulance, Fire;
- residential/commercial accommodation; and
- a leisure centre.

As a direct result of the redevelopment, Trust accommodation in prime town centre locations will become surplus. It is the intention of the Trust to dispose of these assets in a manner that will result in maximum capital receipts for the public purse, as set out in the project Outline Business Case and subject to the appropriate departmental approvals.

Source: Strategic Investment Board

The Department for Employment and Learning is developing a methodology that will enable capital to be raised from the sale of the surplus assets on the open market

1.10 The Department for Employment and Learning (DEL) is in the process of developing a methodology with the Strategic Investment Board (SIB) and DFP (on the Belfast, Lisburn and East Down Institute PPP projects). Instead of the surplus assets being transferred to the private sector operator, a capital amount will be made to that private sector operator. The intention is that this capital amount will be raised from the sale of the surplus assets on the open market. The land sales have not been signed as yet but the private sector operator is content with this approach. DEL intends that surplus assets in future PPP deals will be sold in the open market. In the Further Education Sector, DEL has the power, under legislation, to allow the Colleges to retain all the receipts for approved capital investment. The Authority, in agreement with the private sector operator, will make a decision, based on VLA valuations, as to the proportion of the capital sum that will contribute to reducing the borrowing raised by the private sector operator.

1.11 DEL intends to submit this proposal to DFP when a business case has been produced which supports such an approach and can clearly demonstrate value for money to the taxpayer.

The Ministry of Defence has recently commenced an innovative partnership with the private sector to deliver new facilities

1.12 A further approach for dealing with surplus land has also been developed by the Ministry of Defence in London. This project arose from a strategic review of the Ministry of Defence Estate in London (MoDEL) (see Case Study 2). It involves new investment in a core site at MoD's West London Airfield at Northolt, relocation of personnel from six sites elsewhere in London and the subsequent disposal of the surplus land.

1.13 As part of Partnership UK's[12] public sector mission it is keen to help organisations consider whether a similar approach might benefit them. The approach can be considered in circumstances where there is a well articulated estate rationalisation plan and where one or more of the following characteristics exist:

- there is a requirement for investment in new facilities;
- focus on a core facility will allow peripheral locations to become surplus over time;
- the properties concerned are ideally within a single ownership and predominantly freehold or valuable leasehold; and
- there are benefits from integrating the programme to deliver new investment and associated rationalisation.

1.14 Retaining receipts from the sale of fixed assets to support further investment is in keeping with the Lyons Report[13] (December 2004). The report records that, since 1998, departments in GB have been allowed, within limitations,[14] to retain receipts from the sale of fixed assets to support further investment, instead of returning them to the Treasury. It recognised that each individual case should be assessed on its merits.

1.15 Before including surplus assets in any deal, public sector bodies should assess the relative returns and priority between inclusion and conventional disposal. They must also properly assess the contribution these assets may make to the achievement of other strategic priorities and objectives. This will require the development and implementation of an effective estates strategy that considers the best long term use of these valuable assets.

1.16 Where surplus assets are to be sold, the ability to maintain receipts can incentivise authorities to maximise income generation. We believe that this approach is worth pursuing where a business case can be produced which demonstrates maximisation of receipts and value for money for the public purse.

Case Study 2 - Ministry of Defence (MOD) Estate in London (MoDEL)

In a strategic review of the Ministry of Defence (MOD) Estate in London (MoDEL), the Department determined that it would invest in its core site at Northolt Airfield. As a result of this determination, six sites will become surplus and available for disposal.

To facilitate the project, MOD entered into a contract with a consortium (VSM Estates) which will:

- manage and finance a programme of new investment (circa £150m) at its core site;
- relocate personnel and manage the subsequent disposal of the surplus sites; and
- underwrite minimum land values (circa £230m) and invest in achieving planning permission at the six surplus sites, the demolition of existing buildings and installing basic infrastructure prior to managing their disposal as packages for development on the open market - it is not permitted to develop the surplus sites.

The surplus sites will be sold immediately, with MoD taking a leaseback for the period of continuing occupation – providing VSM with sufficient interest upon which to raise finance. MOD believes that such an approach will lead to an accelerated programme, realisation of operational efficiency savings and sharing in the returns from private sector infrastructure investment and planning skills. It considers that VSM is taking the key risks on the cost of re-development at Northolt, the levels of receipt that can be achieved on sales of land and its ability to manage the programme to minimise the costs associated with negative cash flow.

Source: MOD Defence Estates / PUK

12. PUK, formed in 2000 out of HM Treasury, is a joint venture that offers a blend of public and private sector commercial expertise combined with hands-on experience in the development and delivery of numerous Private Finance Initiatives (PFI) and other Public Private Partnerships(PPP) projects.
13. *Towards Better Management of Public Sector Assets.*
14. Departments can only retain receipts where the proceeds from an individual sale are not more than £100 million or the value of total receipts received in-year does not exceed 3 per cent of a department's total budget.

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Part Two

Market value for surplus lands may not have been achieved

Housing development on the Wellington surplus land site

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The value of the land should be maximised prior to disposal

2.1 The guidance produced for UK NHS Trusts (see paragraph 1.6) suggests that public sector bodies should consider obtaining outline or enhanced planning permission for surplus land prior to its disposal. Extant guidance at the time of the Pathfinder contract negotiations[15] also outlined the benefit of having planning permission in place to maximize income generation. Pursuing this route (particularly enhanced planning permission) can lead to the public body receiving the full benefit of any uplift in value, rather than sharing with the service provider increases in value through development at a later stage. However, the major drawback of such an approach is the inability of the public body to transfer the planning risk. Therefore, each project must be considered on its own merits.

2.2 In Spring 1998 the Belfast Board sought independent valuations for the Wellington College and Balmoral High School sites that were prepared for '*accounts and loan security purposes*'. At that time the open market values for the complete sites were £12 million and £1.635 million respectively (assuming full planning permission for residential development). The Department told us that the negotiations on the Wellington, Rosetta and Balmoral sites were conducted on the assumption that outline planning permission was in place. However, the risk and expense of obtaining full planning permission was transferred to the preferred bidder. Outline planning permission for the Wellington site was approved in March 1999. Planning approval was sought by the bidder for the Rosetta site in February 2000 (before the award of the contract). Although initially refused, it was approved by the Planning Appeals Commission in April 2001, 6 months after contract completion.

2.3 Since the Pathfinder Projects, the Department has encouraged school authorities to consult with the Planning Service and identify potential for alternative uses and zoning within the area plans at the earliest possible opportunity, should surplus land be available. This is to ensure that the best possible use might be made of the land and its value maximised. This leaves the project team in a stronger position to negotiate a higher value for surplus land.

2.4 This approach is in line with updated guidance issued by DFP on the sale of surplus property and land in 2005. The guidance also highlights the need to consider how disposals may impact on local area plans and the need to co-ordinate disposals to avoid market saturation which could depress the sale price. However, it does recognise that the need to seek planning permission should be considered on a case by case basis since this process, in certain cases, may require an investment of time and expense which may make it counter-productive from a public sector perspective.

2.5 We welcome the guidance issued by the Department of Finance and Personnel and the initiative by the Department of Education to encourage school authorities to consult with the Planning Service.

2.6 In our view, if this was done prior to disposal of surplus assets it would place public sector bodies in a much stronger negotiating position. While recognizing that each case must be viewed on its own merits, we believe that unless there is a clear demonstrable reason to the contrary, public sector bodies should take all reasonable steps to maximise the value of the land prior to disposal; for example, by obtaining enhanced planning permission

On the Wellington and Balmoral Sites additional land (Rosetta) was identified during negotiations

2.7 The key surplus land values and dates for the Wellington site are set out in Appendix 2. At the outset, the intention was for a new build solution at Wellington College and refurbishment of the existing Balmoral High School buildings. At the Wellington site, 18 acres of the 38-acre site were identified as surplus. However, during negotiation of the PFI contract, the preferred bidder proposed a new build solution which required six acres fewer than the conventional build proposal. A similar situation arose in the Balmoral site where the conventional proposal identified 2.5 acres of surplus land, while the PFI option identified over 9 acres.

15. DAO (DFP) 3/97 and DAO (DFP) 3/99

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2.8 A further tract of land adjacent to the Wellington site (the Rosetta site), estimated by the preferred bidder to be approximately one acre, was identified in May 1999 as surplus (Appendix 2, (v)). This was a prime, flat site which was ready for development. In return for the additional land the preferred bidder offered £0.99 million, one all weather pitch in place of two conventional pitches and an enlarged sports hall (which the Board estimated to be a total benefit value of £1.4 million). The decision to include the disposal of the surplus land at Rosetta was approved by the Department as providing "*reasonable value for money within the overall bid*".

The Rosetta Site land value was based on incorrect information on the size of the site

2.9 Our review found that the Belfast Board's financial consultants had agreed a formula-based (pro-rata) uplift in the final price payable for the Rosetta site. This was based on the preferred bidder's estimate of the area of the land. VLA told us that it was not consulted or instructed to carry out an independent valuation exercise and it did not become aware of the inclusion of the Rosetta site until after terms had been concluded with the preferred bidder. Our review of papers supporting the Rosetta transfer also identified inconsistencies in the reported size of the site, varying between 1 and 1.5 acres. VLA has since confirmed to us that the Rosetta portion of the site was approximately 1.5 acres, rather than 1 acre quoted to VLA at the time of the PFI negotiations. This would have increased the value of the site to £1.32 million at contract signature, instead of the agreed £0.99 million.

2.10 Given the introduction of this prime site to the surplus land agreement during negotiations, and the increased value associated with its inclusion, we would have expected the Belfast Board to have sought a full, comprehensive and updated valuation of the Wellington site from VLA. This valuation should have taken place as close to contract signature as possible, when site boundaries were clearly established. This would have placed the Belfast Board and the Department in a better position to judge the relative merits of the deal on offer. Instead the valuation was based upon inconsistent assessments and assumptions, including:

- the reported site area which varied from 1 to 1.5 acres;
- the valuation of the site was calculated on a pro rata basis; and
- the calculated transfer value at contract signature was based upon a site valuation which was 10 months out of date.

No auction took place in the Wellington/ Balmoral project as the transfer of the surplus land was considered crucial to the PFI contract

2.11 VLA told us that its preferred method of disposal is the auction of sites with a reserve price set in accordance with the planning potential identified, following appropriate investigations. Where considered helpful, for example in counteracting negative market perception or in enhancing value achievable in certain cases, it will sometimes recommend obtaining specific outline planning consent prior to sale. Otherwise it believes the costs and specifics of seeking consents are generally best left to the market provided realistic assumptions, based on a low risk of achieving alternative development uses, are apparent and factored into the market for the property. By adhering to such an approach, the Agency believes that it prevents the establishment/operation of cartels and provides certainty in relation to achieving best value. Where there is potential to realise a higher value through the purchaser subsequently obtaining a superior planning consent, the VLA would recommend off-setting that risk by including suitable clawback provisions in a sale agreement.

2.12 In the Pathfinder Projects none of the surplus land sites were subject to auction. We were told by VLA that this practice was not followed as the lands had been incorporated into the PFI contract and fell outside normal guidelines. In the case of the Wellington/Balmoral sites, the surplus land transfer was considered to be crucial to the success of the PFI contract. The Department told us that the practice of re-valuing the land regularly had been pursued in the early stages of project negotiation. However, this became impractical due to the prolonged nature of negotiations and resistance by the preferred bidder, since other aspects of the contracts, such as the negotiation of the unitary charge, could be repeatedly affected by this process. VLA told us that as a result of these difficulties, it adopted what it considered to be a more pragmatic and workable approach.

2.13 A Gross Development Value of £47 million (representing an estimated future sale value for the completed development), index-linked to the Retail Price Index, was attributed to the Wellington surplus land. This would be used as the base from which to measure additional site value and clawback proceeds through the mechanisms of the contract, assuming the site or parts thereof were fully developed by the operator. Following transfer and site development, clawback (representing sale proceeds exceeding Gross Development Value) would be shared by the two parties. Where the land was partially developed the Gross Development Value would be apportioned. Other clawback provisions were in place in the event of sales of the surplus lands, or parts thereof, in an undeveloped state.

2.14 VLA considers that the eventual outcome was satisfactory, but the use of Gross Development Value for calculating clawback (where the land was developed out in full or in part by the PFI operator) in the Wellington/Balmoral site was an unusual approach and even a "*method of last resort*", as compared to an open market sale. It considered this was made necessary by the imposed context of the disposal, the declared (but not contractual) intention of the PFI operator to develop the sites and the intense negotiations with the preferred bidder.

2.15 Where land or buildings become surplus to requirements as a consequence of any proposed development, two tests for VFM are appropriate:

(1) the economic assessment of the overall PFI scheme, and
(2) an economic assessment of the land disposal.

Where disposal is confirmed, it should be for at least open market value. Whilst it may appear that there are benefits to be gained out of using surplus land proceeds to finance deals, there is a risk of achieving poor value for money. It may be pragmatic to agree a value during negotiations which appears to make the project more affordable. However potential land values can be difficult to predict. Open market value should be sought at the outset for all disposals. Consideration, at this stage, should also be given to how surplus assets are marketed to maximise income.

The transfer value of the surplus land sites at Wellington/Balmoral may not have represented full market value at contract signature

2.16 Figure 3 sets out the history of valuations for the Wellington, Balmoral and Rosetta surplus land sites. The preferred bidder valued the combined sites in November 1998 at £17.8 million. However, in May 1999, these sites were valued by VLA at £19.3 million; the Wellington site increasing in value to £16 million and the Balmoral site reducing to £3.3 million. VLA told us that the reduction in the value of the Balmoral site was due to a change in planning consent assumption from commercial to residential (their enquiries suggested that planning permission for the former would be difficult to obtain). However, provision remained within the agreement to capture the additional commercial site value should the bidder ultimately be successful in obtaining commercial consent.

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Figure 3: The Transfer Value of the Surplus Lands at Wellington and Balmoral Changed Significantly

Site	November 1998 (Preferred Bidder Valuation) £m	May 1999 (Interim VLA Valuation £m	October 2000 (Income at Contract Signature) £m
Wellington	12.5	16.0	15.5
Rosetta*	n/a	n/a	1.0
Balmoral	5.3	3.3	3.3
Total	17.8	19.3	19.8
NIAO Estimate of Site Value			23.2**
Shortfall at Contract Signature	-	-	(3.4)

* Rosetta site was part of the original Wellington site but negotiated as a separate surplus land agreement with the preferred bidder in September 1999.

** The estimated valuation of £23.2 million is based on valuations obtained pre-contract signature with those obtained at the date of transfer.

2.17 In the event, a total of £19.78 million was agreed for the combined Wellington (£15.50 million), Balmoral (£3.28 million) and Rosetta (£0.99 million) sites at contract signature. The Board told us that the Wellington site transfer value had been reduced during negotiations by agreement, in return for an increased share of clawback at a future date, based upon the Gross Development Value of the site (see paragraph 2.13).

2.18 This increased share was to be calculated in accordance with the provisions set out in the contract. The Department estimated that this would ultimately result in the income generated from the transfer of the Wellington/Rosetta sites alone increasing from the guaranteed minimum land value (Guaranteed Land Value) of £16.5 million (Figure 3) at contract signature to approximately £19 million. It anticipated that the Guaranteed Land Value receivable by the Board would be indexed, on an upwards only basis, through the action of the clawback provisions outlined in paragraphs 2.11 to 2.14. In effect, this amounted to a property value based index. VLA told us that it expected that this would take account of the interval between agreement of the Guaranteed Land Value in 1999 and the date of contract signature, as well as providing a fair share of income as may or may not arise.

The Board sought assurance from the Department and its consultants on the viability of the project

2.19 Prior to contract signature in the Wellington/Balmoral project, the Belfast Board wrote to both the Department and its financial consultants seeking advice and assurance. It considered the Department to be very much the initiator of the policy and the key driving force behind the negotiations of the final agreement. The Board's main concerns were:

- the surplus land effectively paid for the capital expenditure of the project on transfer. Since the consortium's banker was able to recover its loan to the consortium following this transaction, it would have no further interest in the subsequent provision of services. The Board therefore considered itself exposed in relation to the delivery of the services, as it believed that the main interest of the consortium was the land, its development and subsequent sale;
- was the value of the surplus land negotiated with the bidder reasonable? and
- the value for money of the project, as the public sector comparator was 2.3 per cent lower than the final bid.

2.20 In response, the Department assured them that it considered the project viable and adequately secured through the shareholder guarantees in respect of the insurance of the buildings. Furthermore, it took assurance from the Valuation and Land Agency's professional opinion that, while it would always prefer an open market sale of surplus lands and had not advocated the PFI methodology pursued in this case, it considered that the best overall value and terms had been secured within the context prescribed in respect of the project. The Department was also satisfied that the best value for money option had been selected, given that the final bid allowed for the provision of two new schools and a Regional Training Unit, while the public sector comparator was based upon a new school at Wellington and refurbishment at Balmoral.

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2.21 VLA told us that there was a considerable benefit derived from the fact that, although the Wellington surplus land had technically been sold on signature of the contract in 2000, the Board was due to continue to occupy and run the school in the old buildings on the surplus land, while the new school buildings were built and until their completion in 2002. This benefit has never been financially quantified, but it is nevertheless significant as it minimised disruption to the school's operation and prevented the need for an interim decant.

2.22 Clawback clauses mitigate against losses from the under-valuation of assets at contract signature (see paragraph 3.1). They also allow the public sector to share in income generated from the sell-on or development of those assets. However, their inclusion does not absolve public sector bodies from obtaining accurate, up-to-date land valuations. Such valuations are essential to demonstrate whether or not market value has been achieved at contract signature.

2.23 We recommend, as good practice, that updated valuations are obtained in advance of contract signature and at other key stages of the negotiation process.

There was a potential shortfall of around £3.4 million in income at contract signature in the Wellington / Balmoral Project

2.24 Using valuations for the sites at the date of transfer of ownership (Rosetta July 2001, Wellington/ Balmoral February 2002), we estimate the market value of the combined sites at contract close in October 2000 to be £23.2 million (see Figure 3). As a result, we estimate the potential shortfall of income to the public purse at contract close to be £3.4 million. The Board commented that whilst this calculation extrapolates land value to the date of contract signature, it does not consider the potential impact that a revaluation would have had on the overall deal. It considers that the bidder would almost certainly have revised unitary payments and income sharing mechanisms and these adjustments could well have negated the estimated gain to the public purse. However, it is not clear to us that this was tested at the time of negotiations.

2.25 Provisions were included in the Surplus Land Agreement protecting the Belfast Board from;

- a sale of undeveloped surplus land by the PFI Operator with an element of "clawback" for the Belfast Board; or
- the development of the site by the PFI Operator and an effective share of the income with the Belfast Board.

These were to commence on the Wellington/Rosetta site when "excess" income beyond £47.4 million (Gross Development Value) had been received by the operator from house sales. However, our review of the clawback model suggests that there would be no real sharing of income on these sites until income exceeded £67 million; share of any excess income until this point would only cover the shortfall in land values at contract signature (see paragraph 2.13).

Similar transfers at less than market value were apparent in other PFI Education Pathfinder Projects

2.26 Surplus assets were transferred at less than current market value in three other PFI Pathfinder projects. In the Belfast Institute, income generated from the transfer of the sites was at least £0.65 million below market value; the North West Institute highlighted further inconsistencies in how the final transfer value was agreed; and in the Drumglass School project, £0.41 million was obtained for the land transfer at contract completion compared with an open market value of £0.5 to £0.6 million. Details of these land transactions are contained in Appendix 3.

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Surplus funds arising from the transfer of the land were to be retained in a deposit account and offset against unitary payments

2.27 The Surplus Land Agreement for the Wellington/Balmoral Project provided for the payment of £860,000[16] by the PFI Operator to a *Surplus Land Proceeds Account*, on completion of the construction phase of the project. The Agreement provided for the funds to be released by apportioning the £860,000 over the 25 years of the Agreement (£34,000 a year) and for this to be offset against the unitary payment. Under the Agreement the PFI operator was responsible for managing the account but transactions had to be authorised by the Belfast Board. The Agreement also provided for the establishment of a Surplus Land Liaison Committee 30 days from the transfer of the Rosetta site (July 2001). The Committee was to be made up of nominated representatives from the Board, the Operator and its Banker and was to meet at least quarterly. Part of its remit was to review information received by the Board. In January 2005, following our initial enquiries, a preliminary meeting of the Committee was arranged, where responsibilities and protocols were established for its operation.

2.28 We consider that the failure to establish this Committee meant that, in the intervening period, the Board's monitoring of the transactions and balances held within the Account was limited. Our view was confirmed following review of information supporting the Surplus Land Proceeds Account transactions. We found that:

- the £860,000 was only placed in Treasury Deposit Accounts in September 2004. The Department told us that this was a matter for the operator to manage;
- no bank statements were requested by the Belfast Board from the Operator until November 2004; and
- the Board has confirmed that the £170,000, due to the PFI Operator from this account for unitary payments, was authorised for release in January 2007. A monthly deduction has now been established to release the balance of funds to the Operator over the remaining period of the contract.

Interest on the Land Surplus Proceeds Account was paid to the Operator

2.29 The Surplus Land Agreement also provided for all interest accruing on the Surplus Land Proceeds Account to be paid to the Operator. The Department told us that this reflects the considered allocation of financial risk to the private sector operator within the Agreement. The financial model developed for agreeing the level of the unitary payment estimated interest earned by the operator at 3 per cent on the reducing balance of the initial deposit amount of £860,000. The Authority benefits from this interest through a reduction in the unitary payment.

2.30 We found that the funds have been placed in Treasury deposit accounts yielding interest rates in excess of the 3 per cent planned in the original financial model. For example, in the period September 2004 to September 2005, interest earned by the Operator was £42,000. The Department told us that the financial model used for calculating the unitary payment provided for interest at 3 per cent per year. This resulted in £22,000 over the same period.

2.31 Although responsibility for the management of the Surplus Lands Proceeds Account rests with the Operator, these are nonetheless public monies. In our opinion the Board has not exercised the necessary stewardship over these funds. It is vital that public bodies ensure that the necessary governance arrangements are put in place and implemented to protect, monitor and manage public sector funds.

Potential conflicts of interest in PFI consultancy appointments were identified by the Department and the Board

2.32 In 1997, the Department drew to the attention of each of its PFI consultants that there was potential for conflict of interest where:

16. This amount represented the excess of the agreed value for the transferred land of £19.8 million (see figure 3) over the agreed capital cost of the project (£18.9 million - see figure 2).

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- a company acted as adviser for both the public sector and consortia bidders on the same project; or
- a company provided consultancy to a bidder on a project which it intended to bundle together with other projects on which the consultancy group was acting as public sector adviser.

2.33 In July 1998, two of the companies providing the Department with financial consultancy services on the pathfinder projects amalgamated. To address this issue, the Department wrote to the newly formed company expressing its concerns. The Company acted as financial advisor to the Department and the Board on all six of the Pathfinder PFI Projects. However, the Company told us that this advice was limited to the procurement phase of each project and it was not retained to provide advice to the Department or the Board on any aspects of the implementation of the surplus land agreements and has not provided any advice in relation to such matters since contract award.

2.34 The Department advised us that at no stage prior to contract award did the company advise the preferred bidder and the public sector on any Pathfinder Project. In addition, over the course of the brief period during which a potential conflict of interest could have arisen (July 1998), the company took strict measures to ensure that the independence of its advice was not compromised and these measures included the strict segregation of the two advisory teams and the enforcement of robust "ethical walls".[17]

2.35 We welcome the Department's early recognition of potential for conflict of interest. This case highlights the need for public bodies to remain alert to the risk of potential conflicts of interest where consultants might provide services in a given project to both the public sector and a potential service provider. This issue was also highlighted in our report on Private Finance Initiative: *A Review of the Funding and Management of Three Projects in the Health Sector, (HC 205) 2003-04.*

2.36 In our view, the use of "ethical walls" as a safeguard in dealing with potential conflicts of interest is not, in itself, acceptable to mitigate conflicts. It is also important that, in evaluating the likely consequences of such situations and relationships, public bodies consider whether it is probable that it could be concluded that objectivity is impaired or likely to be impaired.

17. The ethical (not physical) barrier between different divisions of a financial (or other) institution to avoid conflict of interest.

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Part Three

Controls were put in place to protect future interests but they were not fully effective

Clawback arrangements aim to ensure that the taxpayer obtains a share of income realised subsequent to the disposal of surplus assets

3.1 It is important when public bodies enter into complex agreements, such as PFI contracts, that controls are in place to protect the future interests of the public money invested. The Committee of Public Accounts (PAC), Northern Ireland Audit Office and National Audit Office have all addressed the issue of clawback in previous reports. For example, the PAC Report on the Castlecourt Shopping Centre[18] made a number of key recommendations:

- the need to develop clawback arrangements at the outset of negotiations;
- that clawback should be recoverable over an extensive period of time;
- that clawback arrangements should be adequately robust in order to deal with volatility in the market place;
- where super profits are obtained, the taxpayer should share in these; and
- that the return on investment before clawback clauses are invoked should be reasonable rather than generous.

3.2 The UK Department of Health guidance (paragraph 1.6) also recommends that consideration should be given to the inclusion of clawback. It notes that clawback provisions are particularly apt where the future provision of planning permission can greatly enhance the value of the land. It further recommends that such clauses should be carefully sculpted to ensure that the public sector mitigates valuation risk and obtains value for money in the forward sale of land.

3.3 The guidance also states that clawback clauses should not be viewed in isolation; consideration needs to be given to the inclusion of such clauses as this may impact on the overall contract cost. Where they are included, there needs to be recognition of the risk, effort and input the private sector will make in enhancing the value of the land in negotiating the clawback formula. Where the risk taken by the project company in enhancing the value of the land is low, it should accrue a lower share of the profit and conversely where the risk is higher.

3.4 The failure of disposing bodies to secure a share in the development value of surplus land has in the past attracted audit criticism. More recent guidance issued in Northern Ireland on the disposal of surplus property (see paragraph 1.5) highlights the need to consider when and how the public sector should seek to secure maximum return from the purchaser. This identifies the need for sound drafting and legal advice on the contract terms relating to the disposal of land and share of profits realised subsequent to the original disposal.

In the Pathfinder Projects we found a wide variation in how income would be shared

3.5 In September 1999 the Finance and General Purposes Committee of the Belfast Board was advised by Board officials that it was *"anxious to ensure that the Operator does not make excessive profits on the development of the surplus land and it (the Board) is in the process of negotiating a profit-capping mechanism linked to the selling price of the houses being developed"*. Furthermore, in a written submission, the Department of Education told the Committee for Finance and Personnel[19] that *"income or profit realized by private developer above the agreed threshold would be shared with the public sector................thereby fully protecting the public sector's long term interests"*.

3.6 In each of the land disposals reviewed, clawback clauses were included in the final signed contracts and a Contractor Monetary Threshold set. This is the additional value received by the operator on the sale of surplus undeveloped land, beyond which payment of clawback will commence. The rationale behind Contractor Monetary Threshold is to enable the PFI operator to earn an initial slice of any return received over and above the purchase price, to reflect their financing and other costs, in particular the cost

18. *Castlecourt Shopping Centre (Belfast) Arrangements for Clawback of Urban Development Grant* - Twenty Seventh Report (Session 1995-96).

19. *Report on the Inquary into the Use of Public Private Partnerships (2000/01).*

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Figure 4: There were significant variances between Contractor Monetary Thresholds and the gross land values

School	Site	Gross Land Value at Transfer (GLV)	Contractor Monetary Threshold (CMT)	Difference in GLV and CMT	Gross Development Value (GDV)
Drumglass		£409,500	£515,000	25.8%	-
Wellington/Balmoral	Rosetta*	£985,000	N/A*	N/A	
	Wellington	£15,500,000	£16,500,000	6.5%#	£47,400,000
	Balmoral	£3,280,000	£3,780,000	15.2%#	£9,900,000
Belfast Institute	Ormeau	£2,346,865	£2,596,865	10.7%	
	Templemore	£29,571	£29,571	-	£7,850,000
	Willowfield	£150,543	£180,543	19.9%	
North West Institute		£750,000	£900,000	20%	-

The combined difference in GLV and CMT for the Wellington/Balmoral Sites is 8%
* No GDV was set specifically for the Rosetta Site
Source: NIAO

transferred to them of obtaining planning consent. Our review highlighted that the difference in Contractor Monetary Thresholds and the agreed gross land value at contract closure varied (see Figure 4).

3.7 In each of the contracts, it was agreed that where Contractor Monetary Thresholds were breached in the event of the sale of undeveloped land, income would be shared between the operator and the authority. However, there was a wide variation on how this would be done. For example, in the Wellington and Balmoral sites, it was agreed that, upon disposal of any undeveloped surplus land, the clawback would be distributed, reducing over a 5 year period from 80 per cent in favour of the Board at year 1 down to 25 per cent at year 5 and thereafter (Appendix 4). A similar arrangement was negotiated in the Belfast Institute project. In both the North West Institute and Drumglass contracts, the clawback negotiated was a 50:50 share of income above these thresholds without any time limitations.

In the North West Institute project there was no profit-sharing on a building sold on for an additional £175,000 four months after its transfer.

3.8 In the North West Institute Project, a listed building, the Tillie and Henderson factory, was identified as surplus to requirements. In December 1997, it was valued at £750,000, the valuation used at contract close in August 1999 (see Figure 2). The property was subsequently sold in December 1999 for £925,000, breaching the Contractor Monetary Threshold by £25,000. The Department told us that no clawback was recovered, as the additional expenses incurred by the operator in the sale would have reduced the net income below Contractor Monetary Threshold.

The Wellington/Balmoral Contract prevented the sale or transfer of land within 12 months

3.9 The Wellington/Balmoral contract included a clause, exclusive to it, aimed at preventing the sale of any land by the operator to connected parties within 12 months of its transfer. We were told by VLA that the clause had been introduced to prevent the operator from transferring the land to a connected

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party almost immediately at market value, benefiting from the Contractor Monetary Thresholds allowances and subsequently excluding the Board from further clawback payments. The provision was to protect the Board, since there was the potential for the operator to retain £1.5 million (£1 million on Wellington site and £0.5 million on Balmoral site) income from the sell-on of undeveloped land without sharing it with the Belfast Board. It was further agreed that, where the Balmoral site was disposed of with Commercial Planning Permission (defined in contract as any use other than residential), any relevant excess income would be shared between the Operator (55 per cent) and the Board (45 per cent).

3.10 Various schedules were negotiated and included in three of the four PFI Education Pathfinder contracts for the disposal of 'partially developed' surplus land. The Drumglass Project had no clause for such circumstances. In the Belfast Institute Project, additional clauses were developed for the transfer of sites with planning permission and also where a marriage value[20] might be obtained.

3.11 Given the numerous and varied conditions that have been agreed within the Education PFI Pathfinders Projects, there is, in our opinion, a need to develop best practice in drafting surplus land agreements. This may be addressed through an addendum to the current "*Standardised Framework for PFI contracts (NI)*".

Gross Development Values were established as a basis for clawback

3.12 As part of the clawback arrangements, Gross Development Values[21] were established for the Belfast Institute (£7.85 million subject to indexation) and Wellington/Balmoral sites (£47.4 million and £9.9 million respectively) – see Figure 4. Within both contracts, income over and above Gross Development Values was banded and within each band, the percentage share of excess income to be received by the operator and Belfast Board was detailed.

20. Marriage value is the increase in value of land as a result of purchasing neighbouring site(s).
21. When aggregate income from disposal of developed surplus land exceeds the Gross Development Value, any additional relevant income shall be shared between the Operator and the authority.

3.13 The use of Gross Development Values, as a basis for assessing the Board's share of income from increased land values, is less than ideal (see paragraph 2.14). Given the significance of the Gross Development Values figures in each of these projects, we would have expected the sharing of income to have been based on actual income and expenditure, independently verifiable through open book accounting. These procedures should include access to development company records and audited accounts on an annual basis and a right of inspection by the contracting authority and its auditors.

The Operator was prevented from selling on the Balmoral site for less than market value

3.14 In January 2003, 18 months after the transfer of the land, a dispute arose in relation to the proposed sale to a connected party of the surplus lands at the Balmoral site. The Operator informed the Belfast Board that it was selling the site, undeveloped, for £3.8 million to a wholly owned subsidiary of the contractor. Given that the site had been transferred for £3.28 million and a Contract Monetary Threshold of £3.78 million had been agreed (see Figure 4), the Operator considered that the Board's clawback was limited to £13,000.

3.15 The Belfast Board rejected the Operator's suggestion that the Board's clawback was limited to £13,000. It disputed both the valuation placed on the site by the operator and the operator's classification of the status of the site for the purpose of the Surplus Land Agreement. It argued that certain works constituted partial development and therefore required the surplus lands to be openly marketed in accordance with the protocol set out in the Surplus Land Agreement. This position was not accepted by the Operator.

The Board negotiated clawback of £793,000 from the onward sale of the Balmoral site

3.16 The Board sought detailed legal advice. A Commercial Valuer reviewed the valuations submitted by the Operator and an expert Quantity Surveyor was

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engaged to determine whether the works carried out constituted partial development, as defined in the contract.

3.17 The Board's Valuer rejected the valuation submitted by the Operator's Valuers and carried out his own detailed valuation of the site, benchmarking it with other similar sales in the area. Detailed negotiations took place and on the conclusion of these, the Board's Valuer recommended a market value of £5 million, provided the transaction was deemed to take place in Year 2, attracting a clawback of £793,000 under the undeveloped land sale provisions.

3.18 However, following the sale of the Balmoral site, there was a five month delay in the payment of clawback by the developer. The Belfast Board estimates that this has resulted in a £30,000 loss of interest to the public purse which it is now pursuing. The Board told us that it has realised its entitlement to clawback under the Surplus Land Agreement; the Board has no further interest in the land.

3.19 The Operator's delay in making the clawback payment, and the consequential loss of interest to the public purse, demonstrates the importance of ensuring that clawback and other payments due to the public sector are paid promptly. Contracts must clearly specify the need for prompt payment and include punitive measures where this is not done.

3.20 The Valuation and Lands Agency told us that the public sector would not normally seek entitlement to receive a share of operational development profits, but will protect itself against potential further increases in the market value of what was sold (in the case of the PFI education pathfinder projects, the surplus lands). Given the risks associated with the transfer or sale of property to a third party, it is important that, under the terms of the contract, an authority's position is protected. The contract for Balmoral protected the sale or transfer of the site at less than market value. It is also important that land and property contracts include a '*clawback on assignment*' protection, ensuring that disposing bodies secure a share in the development value of surplus land should the purchaser's interest in a development be subsequently sold or transferred.

A plot of land adjacent to the site at Balmoral was sold to the PFI Operator

3.21 In February 2004, the Board and the PFI Operator agreed a clawback figure of £793,000 (paragraph 3.17). Following these negotiations, but crucially before payment of the agreed clawback amount had been made by the PFI operator to the Board, the issue of sight lines at the main access points to the site arose in the context of the PFI operator's application for detailed planning consent. Since the sight lines encompassed a small plot of land owned by the Water Service, the PFI Operator contacted the Water Service with a view to purchase.

3.22 The Board told us that a property audit report had previously been conducted in 1997 by its Legal Service. This was aimed at examining lands within the proposed schemes, ensuring that the Board had good title to the sites, uninterrupted access to the sites and to highlight any easements or encumbrances on the title. They explained that in 1997, the parcel of land was not in the ownership of the Board either at the time of the preparation of the property audit report or at the time of the transfer of the surplus land. It only became apparent in 2003, when the issue of sight lines to the site was raised by the Roads Service.

3.23 The VLA advised the Board that, because the agreed amount of clawback of £793,000 had not yet been received, there was now effectively a choice between pursuing key land value on behalf of Water Service, or of obtaining the provisionally agreed clawback payment otherwise due to accrue to the Board, plus a pro-rata payment for inclusion of the Water Service plot. In advising the Board and DRD Water Service on the situation arising, the VLA stated that the two amounts (either key land based or the pre-agreed clawback amount) were likely to be similar but that, critically, were mutually exclusive in the particular circumstances. Furthermore, pursuit of a key land return was not without risk, as it was entirely dependant on the Water Service plot being proven to be essential to any proposed development on the surplus land.

3.24 For its part, the Board told us that it sought to resolve the matter as quickly as possible, as it was concerned that a delay could have reduced the level of clawback provisionally agreed. It therefore engaged consultants to investigate and report on the feasibility of constructing alternative access proposals to demonstrate that the Water Service plot was not key land. The consultants concluded that the Board could have provided an alternative strip of land to the Water Service. The plot was subsequently transferred to the PFI Operator at pro-rata development value of £32,000. The Valuation and Lands Agency was consulted throughout this process and it considered that this represented the solution which provided the highest guaranteed return to the public purse on its sale, and meant that the Board got the clawback receipts it had assumed it would realise from the outset. The Water Service had given its agreement to the proposed approach and solution at each stage throughout the process and was content to accept the resultant VLA recommendation as representing the best overall public sector outcome.

3.25 We consider that the importance and potential of the original plot of land, or any other alternative identified by the Board, merited retention of key land status. It is not clear to us that this was done in this case. Therefore the deal struck, in our opinion, did not necessarily maximise the return to the public purse. Case Study 3, albeit the purchase of key land by the public sector, demonstrates the principle, one which we consider should also apply to the sale of key land by the public sector.

Case Study 3 – Granville Industrial Estate

In the development of any site, there is a need for the developer to consider both road safety and traffic management issues. Where they arise, it is his responsibility to fund their resolution; this might include the purchase of additional land, without which he may be unable to proceed. In such circumstances, the vendor may take this opportunity to sell the land on at a higher price than it would otherwise have achieved (“key land”).

In the case of the Granville Industrial Estate in Dungannon, Invest Northern Ireland purchased 50 acres of land, at a total cost of £2.3million, to enable its expansion. This included a contribution of £673,143 towards the cost of six acres of land, purchased by the Department of Regional Development’s Roads Service, to facilitate access to the expanded estate. Although the six acres of land required for junction improvements had an agricultural value of £20,000 (£3,333 per acre), they ultimately attracted a price of £115,524 per acre.

Source: Financial Auditing and Reporting, General Report by the Comptroller and Auditor General 2003-04 (HC 96, Session 2004-05)

The Operator sought to sell off the remainder of the Wellington site not fully developed.

3.26 The Wellington and Balmoral Surplus Land Agreement in broad terms provided for two possibilities: sale of undeveloped surplus land by the PFI Operator with an element of “clawback” for the Belfast Board; or the development of the site by the PFI Operator and an effective share of the income with the Belfast Board once the specified threshold was exceeded (paragraph 2.25). In the latter, income generated from the sale of properties built on the transferred sites formed the basis upon which clawback was to be recovered by the Belfast Board from the Operator.

3.27 In May 2005 the Operator notified the Belfast Board that it proposed to transfer the balance of the partial and undeveloped surplus lands on the Wellington site to a connected party. At this stage a substantial portion of the Wellington site had already been developed by the Operator. However, we note that the income generated from the sale of the properties had not reached the threshold at which the Board became entitled to a share of the income. Given the Operator’s decision to transfer the remainder of

the site to a connected party, the Board sought to establish its entitlement to clawback both in respect of the portion of surplus land developed to that date and the lands to be transferred to a connected party. To achieve this, the Board appointed a Consultant Commercial Valuer.

3.28 In calculating the Board's share of the income for the properties sold to the date when clawback was agreed, the terms of the Surplus Land Agreement were applied. Included in the agreement was a gross development value (subject to inflationary adjustment) and the guaranteed land value payable to the Board. Where only part of the land was fully developed, both were subject to pro-rata adjustment based on sales figures. The operator provided the addresses and purchase price of properties sold.[22] From these sales, clawback of £1.56 million was realised by the Board in respect of that portion of the site which had been developed.

An inadequate definition of income may have meant the Board missing out on £150,000

3.29 A dispute arose in relation to the calculation of clawback on sales to date as the Board sought to include "*extras*", provided by the contractor at the request of purchasers, such as upgraded bathrooms, tiling etc. However, the contractor considered this to be beyond the definition of income, as agreed in the contract. It countered that the properties could have been sold as a shell, at a lower cost, and "fitted out" by the purchaser.

3.30 In the negotiations, which could have seen the Board reducing its income by over £420,000 due to the passing of an anniversary date in the contract, it was agreed that the Board would only calculate the amount due based upon a share of 10 per cent of extras. Had the Wellington/Balmoral contract fully addressed the definition of "extras", the Board could have secured an additional £150,000 in clawback.

22. A sample of the sale values was checked by the Board's legal services to Land Registry records for accuracy.

3.31. The impact of not fully addressing a definition of "extras" in the Wellington/Balmoral contract led to disputes between the two parties. This highlights the need for comprehensive, coherent and transparent contract definitions.

Clawback due on the remainder of the site was £1.47 million

3.32 Following negotiations, it was agreed that, rather than applying the "*sale of partially developed land*" clauses (as agreed in the contract), a value of the land in an undeveloped state would be negotiated for the remainder of the site, and the clawback calculated accordingly. In line with this approach, the initial value of the undeveloped land put forward by the consortium was £9 million. This was based upon a valuation of the land which it had identified as developable or partially developable. However, since it excluded areas occupied by roads, footpaths, landscaping etc, the Board considered that this undervalued the site.

3.33. Following detailed negotiations, rather than calculating a price per acre the Board valued the remainder of the site on the basis of its development capacity. Ultimately this approach was accepted by the operator and a value of £11.25 million was agreed. This valuation would result in clawback of £1.47 million for this portion of the site.

3.34. By February 2006 a settlement was reached, which resulted in the Belfast Board concluding full and final settlement of the clawback provisions in return for a total clawback of £3 million for the entire site. Thus, a total of £19.5 million (including £16.5 million at contract signature) was received for the Wellington/Rosetta Site. The site continues to be developed following the completion of clawback negotiations, although by different parties.

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Figure 5: Total Income from Wellington/ Balmoral

Site	Income at Contract Signature £m	Clawback £m	Total Income from Site £m	NIAO Estimate of site Value at contract signature £m
Wellington	15.5	3.0	19.5	17.8
Rosetta	1.0			1.3
Balmoral	3.3	0.8	4.1	4.1
Total	19.8	3.8	23.6	23.2

Source: NIAO

Greater benefits from clawback could potentially have been realised

3.35 We estimate that, through the receipt of the additional £3 million, the Belfast Board has recovered £400,000 over the value of the surplus land at contract signature (£17.8 million for the Wellington site and £1.3 million on the Rosetta site - Figure 5). The potential income share that would accrue to the public sector, if the actual gross development values were exceeded, was recognised in the Final Value for Money Analysis for the Wellington and Balmoral bid prepared in October 2000. This presented an illustration based on an assumption that the Wellington and Balmoral sites would be developed in 5 and 2.5 years respectively. The analysis estimated that from October 2000, if property prices were to increase by 2 per cent over RPI, income accruing to the Board would be £5.2 million. The same analysis indicated that an increase of 5 per cent above RPI would result in an income share to the Board of £10.1 million. We note that the analysis also recorded that residential property prices in the vicinity of Wellington College in the previous three years had increased at a growth rate of 10 per cent in each year.

3.36 VLA told us that it would be commercially unrealistic to force the operator to develop the land fully if it did not wish to do so. It considered that the contract provisions regarding sales of undeveloped and partially developed lands addressed this issue. It further added that restrictions on commercial freedom to act would be as undesirable as it would be impossible to achieve. It suggests that what is important is securing a fair share of any gains, whatever course of action is taken by the commercial operator, and with that aim in mind, also ensuring that the best interests of the commercial operator and the public sector vendor should coincide as closely as possible. However, what this scenario intends to demonstrate is the need for public bodies to be aware, in drafting and agreeing such clawback arrangements, that there may be an increased incentive for the operator to come to an early settlement on clawback arrangements (e.g. through transfer to a connected party), and the importance of including adequate clawback on assignment provisions as described in paragraph 3.20.

3.37 We acknowledge VLA's comments on contract settlement. However, the Committee for Finance and Personnel were told that clawback clauses were introduced "*to fully protect the public sector's long-term interests*" (paragraph 3.5). Moreover, we note that the Public Accounts Committee in Westminster recommended that "*clawback arrangements…should be capable of ensuring a fair return to the taxpayer if profits are greater than expected*"[23].

3.38 In negotiating the settlement of clawback clauses, public bodies must ensure that the interests of the taxpayer are best served. This requires up-to-date valuations taking account of approved planning permissions, market trends to date and future projections. On completion of negotiations, public sector bodies should be in a position to demonstrate that they have secured the best deal available and obtained value for money in the process. We do not believe that this has been demonstrated in this case.

23. See footnote 7.

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APPENDICES

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Criteria for judging whether to include land in a PFI Scheme

Status of the Land

Determine which land within the scheme under review:

(i) would remain in operational use within the proposed development;
(ii) would become surplus as a consequence of the proposed development (and by implication would not become surplus if the proposed development did not proceed); and
(iii) had the potential to release development gain (i.e. enhanced value or more valuable planning consent) on either itself/themselves or other land/buildings if they were to be disposed of.

In the case of (i), where such land/buildings are clearly integral to the overall deal, an economic assessment of the overall PFI scheme would suffice for such land transactions. In the case of (ii) and (iii), two tests of value for money would be required:

- the economic assessment of the overall PFI scheme; and
- the economic assessment of the land disposal.

Consider the alternative of conventional sale and reinvestment

Surplus land should only be considered for inclusion within a PFI test if the Authority considers that the alternative of conventional sale and reinvestment of the proceeds in another scheme that has not secured private finance would not command a higher priority. Authorities should agree at an early stage what proportion of the proceeds arising from the disposal of surplus land will be included in the PFI Scheme to assess the implications for affordability. The Authority should also consider whether improved value for money and affordability can be achieved through either reinvestment of the proceeds in equipment or in publicly funding the refurbished elements of the scheme.

Facilitating Local or National Priorities

Consideration should be given to whether the inclusion of any surplus land would facilitate achievement of other national/local priorities and objectives. Reference should be made to estate strategies in making decisions on whether to associate surplus land with a PFI scheme. The absence of an estate strategy would tend to favour a decision not to associate land with a PFI scheme.

Assess Returns Received

In assessing both the relative returns and relative priority between inclusion in a PFI scheme and conventional disposal, Authorities should also take into account:

- the levels of risk and ease of disposal;
- the potential timing of disposal;
- the opportunities for securing planning permission;
- the holding costs of the land (eg continuing capital charges, security, essential health and safety expenditure etc) prior to its disposal; and
- the impact of any delay and/or uncertainty in realising disposal values arising from inclusion within the PFI scheme that would be associated with each option.

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Conflicting Objectives

Ensure that the transaction would not conflict with other objectives of the organisation. An alternative or continued operational requirement would tend to take precedence over disposal (within a PFI scheme). The Authority would need to ascertain whether a better solution might be secured by meeting the operational need elsewhere.

Proper Title to Land

Legal advice should be obtained to ensure that proper title to the land exists and that there are no impediments or reversionary clauses (e.g. the Crichel Down rules) that would prevent the proposed disposal route or impose restrictions on the future use of the land. The Crichel Down rules, for example, require that the original owner of land acquired under compulsory purchase should be given the first option if the land is to be sold. Particular care should be taken where the actual conveyancing of the land to the NHS Trust, although intended, is not complete.

Source; Adapted from Guidance issued by Private Finance Unit of the Department of Health (GB)

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Wellington Surplus Land Transfer Key Values and Dates

Transaction	Date	Value £	Area (Acres)	Details
(i)	April 1998	12m	37.47	Independent valuations, for accounting purposes, of the entire Wellington College site (assuming full planning permission for residential development).
(ii)	Nov 1998	12.5m	24.0	Estimate of area of surplus land on Wellington site by preferred bidder at Best and Final Offer stage.
(iii)	May 1999	12.5m	18.3	VLA valuation of land identified as surplus in Public Sector Comparator (conventional build).
		16.0m	23.6	VLA valuation of land identified as surplus in PFI solution, reflecting negotiations with the preferred bidder and assuming inclusion of further clawback provisions it had recommended in the circumstances of the sale.
(iv)	June 1999	15.5m	23.6	VLA advised a reduced guaranteed minimum land value offer from preferred bidder could be accepted subject to improved clawback provisions being incorporated to compensate.
(v)	Dec 1999	19.0m	24.6	VLA estimate of eventual total proceeds deriving from the Wellington site, including the guaranteed minimum land value, plus clawback and the uplift for a further acre (Rosetta site) which had been identified as surplus by the preferred bidder and agreed at £985K.
(vi)	Oct 2000	16.5m	24.6	Summary of valuations referred to above from (ii) prepared by the VLA for the Board. Figure specified (£16.5 million) represents the guaranteed minimum land value only.
(vii)	March 2005	1.5m	1.5	VLA values Rosetta site as at date of transfer (July 2001). At this stage, the VLA identified that the previously undefined Rosetta site was 50 per cent larger than it had been advised at contract signature.
(viii)	Feb 2006	19.5m	25 (approx)	Negotiations in relation to buy out of clawback led to a further £3 millon recovery for surplus land at Wellington – a total of £19.5 million was therefore received for the site.

Source: NIAO

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APPENDIX 3
(Paragraph 2.26)

Surplus assets were transferred at less than current market value in the other three PFI Pathfinder projects

Belfast Institute

1. In the sale of the three surplus sites in the Belfast Institute Project, an alternative approach was taken to site valuation. In December 1998, a valuation of £2.15 million had been placed on the main Ormeau Road site by the VLA. However, in November 1999, following a significant increase in land values, the VLA considered it to be worth almost £3.0 million. Consultants also estimated a joint valuation of the other surplus sites, Templemore and Willowfield, sites to be worth approximately £0.2 million.

2. During negotiations, updated values on the sites were challenged by the preferred bidder, as they believed that a value had already been struck at £2.35 million. Following a further round of discussion, debate and compromise, it was agreed between the contractor and the Department of Education to increase the earlier valuation of the land, in line with the Retail Price Index, for the 45-month period, from the initial valuation in December 1998 to September 2002 (the date of transfer to the operator). As a result a further £0.2 million was received on transfer. This was the only transaction where this methodology was employed. On receipt of the surplus land the operator transferred the land on to a sister company for an amount equal to the guaranteed land value.[24] In return, the monies received were used to offset the operator's senior debt, thus reducing the Institute's unitary payment.

3. From discussions with both the Belfast Board and DE, it was agreed that the appropriateness of using the Retail Price Index was questionable. The Department told us that, in hindsight, it would have been more appropriate to obtain the land value at Market Value as close as possible to contract close, to maximise income for the public purse. However, it considered that the taxpayers' interests had been protected through including detailed clawback clauses, adopted from those agreed in the Wellington / Balmoral project, in the contract.

4. Indications from the November 1999 valuations, the latest date at which valuations were obtained from the VLA, suggest that the income generated from the transfer of the sites was at least £0.65 million below market value.

North West Institute

5. Our review of the North West Institute project has highlighted further inconsistencies in how the final transfer value was agreed. In this project the surplus land and building[25] was valued by the Valuation and Lands Agency at £0.75 million in December 1997. The building and site was valued at £0.75 million and the value of the cleared site was £0.3 million. This valuation was applied in the contract even though it was not signed until August 1999, some 20 months later. VLA has since confirmed that the market value of the building in 1999 would not have exceeded £0.75 million. However, the lack of increase in the market value of the building was due to the significant deterioration of the structure of the building. This is demonstrated in the increased VLA estimate for the cleared site value of £0.65 million

6. The senior debt requirement in the financial model was reduced by £0.75 million as a consequence of the surplus asset being transferred to the Operator. The Unitary Payment was calculated on the basis of this sum being available and contributed directly to a reduction in the Unitary Payment.

24. The agreed value of the land at contract signature.

25. The Tillie/Henderson site in Londonderry - a listed building.

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Drumglass

7. In the Drumglass High School Project (Figure 6), a market value of £0.55 million - £0.6 million was placed on the surplus land by VLA. However, we found that only £0.41 million was obtained for the land transfer at contract completion. Southern Education and Library Board explained that this had occurred as the disposal had been viewed as part of the overall project bid which, even allowing for this reduced value on the land, was still considered both affordable and value for money. It also told us that it drew this to the attention of the Department of Education who remained content to approve the surplus land transaction.

8. The VLA's Central Advisory Unit Guidance states that *"… there may occasionally be cases where it will be reasonable to consider wider issues and accept a lower amount. This should only be done in exceptional circumstances and must be justified by the public body's Accounting Officer"*. In these cases the benefits which are expected to result from the disposal must be clearly identified. However, no such evidence was provided by Southern Education and Library Board. It has since accepted that at least market value should be sought on all land deals.

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Income Share in the Event of Disposal of the Wellington/Balmoral Sites

Income Share in the Event of Disposal of The Wellington College Site as Developed Surplus Land

Income Band £	Operator's % Income Share	Overage % Income Share
0 - 5,000,000	80	20
5,000,001 - 10,000,000	75	25
10,000,001 - 15,000,000	65	35
15,000,001 - 20,000,000	55	45
Above 20,000,000	50	50

Income Share in the Event of Disposal of The Balmoral High School Site as Developed Surplus Land

Income Band £	Operator's % Income Share	Overage % Income Share
0 - 1,000,000	80	20
1,000,001 - 2,000,000	75	25
2,000,001 - 3,000,000	65	35
4,000,001 - 5,000,000	55	45
Above 5,000,000	50	50

Example
If in relation to the Wellington College Surplus Land, the Relevant Excess Income was equal to £12,000,000, the Income Share due by way of overage would be as follows: 20 per cent of first £5,000,000, plus 25 per cent of the next £5,000,000 plus 35 per cent of the remaining £2,000,000.

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Income Share in the Event of Disposal of The Wellington College Site as an Undeveloped site

Year Disposal	Operator's % Income Share	Overage % Income Share
1	20	80
2	35	65
3	50	50
4	65	35
5 and after	75	25

Income Share in the Event of Disposal of The Balmoral High School Site as an Undeveloped Site

Year Disposal	Operator's % Income Share	Overage % Income Share
1	20	80
2	35	65
3	50	50
4	65	35
5 and after	75	25

Example
If in relation to the Balmoral High School surplus land, the Relevant Excess Income in the first year of transfer was equal to £5,000,000, the Income Share due by way of overage would be 80 per cent of five million pounds (£5,000,000).

Income Share in the Event of Disposal of The Balmoral High School Site with Commercial Planning Permission

Operator's % Income Share	Overage % Income Share
55	45

Example:
If the relevant Excess Income was equal to £15,000,000 ,the Income Share due by way of overage would be 45 per cent of £15,000,000.

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NIAO Reports

Title	HC/NIA No.	Date Published
2007		
Internal Fraud in Ordnance Survey of Northern Ireland	HC 187	15 March 2007
The Upgrade of the Belfast to Bangor Railway Line	HC 343	22 March 2007
Outpatients: Missed Appointments and Cancelled Clinics	HC 404	19 April 2007
Good Governance - Effective Relationships between Departments and their Arm's Length Bodies	HC 469	4 May 2007
Job Evaluation in Education and Library Boards	HC 60	29 June 2007
Northern Ireland's Road Safety Strategy	NIA 1	4 September 2007

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